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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re K. L., A Person Coming Under  
the Juvenile Court Law.

B292388

(Los Angeles County  
Superior Ct. No. 18CCJP05004A)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANNIE A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,  
Danette J. Gomez, Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant  
County Counsel, and Jacklyn K. Louie, Deputy County Counsel, for Plaintiff  
and Respondent.

## INTRODUCTION

Mother Annie A. challenges the juvenile court's exercise of jurisdiction over her minor child under Welfare and Institutions Code section 300,<sup>1</sup> and issuance of a custody order under section 362.4 granting sole custody to Father, upon termination of dependency jurisdiction. She contends the juvenile court erred in asserting jurisdiction over K.L. because the parents were already litigating custody issues in family court, and K.L. was residing with Father and no longer at risk of harm at the time of disposition. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. Background and Family Court Proceedings

The family consists of child K.L. (born May 2007), Mother and Father. The parents were divorced, and had pending family court proceedings in Los Angeles Superior Court (Case No. BD492634) related to the dissolution of their marriage. Mother resided with K.L. and her brother (Uncle), while Father resided with his new wife and two children. Mother's older son from another relationship, J.P., was an adult and did not reside with Mother. Under a family court order, Mother had primary custody of K.L. and Father spent every other weekend and every Wednesday with him.

The family had a prior child welfare history. A 2008 referral reported that Mother hit Father in the face, and when J.P. intervened, she also hit him in the face. During another incident, Mother threw an object at Father, which hit K.L. instead. The allegations of general neglect and emotional abuse against Mother were substantiated.<sup>2</sup>

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<sup>1</sup> Further unspecified citations are to the Welfare and Institutions Code.

<sup>2</sup> Other referrals were unsubstantiated. In 2015, it was alleged Mother kept K.L. home from school for three days to protect him from the FBI and CIA. In 2016, it was reported K.L. had witnessed Mother and Uncle engaged in a physical altercation, and K.L. "was scared and did not know what to do." Father said Mother hit K.L. with a cell phone when he was only seven months old, and had once "tried to kill" J.P. when he was 10 years old. Again in 2016, a referral was made alleging K.L. was "hungry all the time" and "not eating" because there was no food at home.

In June 2018, Father requested a family court order to change physical custody and move out-of-state with K.L. Mother failed to appear for a court-ordered mediation regarding custody in July 2018, and Father requested full custody of K.L. At the time of the Department of Children and Family Services (DCFS) involvement in this matter, a family court custody hearing was scheduled for August 2018.

#### B. Detention Report and Hearing

The family came to the attention of the DCFS through a call to the child protection hotline on August 3, 2018, reporting Mother had been “exhibiting odd behavior, including talking to herself, talking to walls, and talking to objects.” Uncle had stated “that mother might stab him while he is sleeping because mother had paranoid thoughts” and believed Uncle was connected to the FBI. K.L., then 11, had stated that Mother and Uncle fought daily, at times becoming physically aggressive. K.L. often cried when describing the incidents and seemed emotionally affected by Mother’s mental health issues.

DCFS social workers visited the family that same day and observed obvious signs of mental illness in Mother. She “could not remain focused” and would “get off topic and go on long tangents.” She reported bizarre government surveillance through “mass surveillance dragnet,” “electronic magnetic field (EMF) brain stimulation,” “military satellites,” and “orgasmatron.”<sup>3</sup> Mother believed her older son, J.P., had been kidnapped by government agents and was conspiring against her. Mother denied having mental health issues, but admitted being diagnosed with schizophrenia. Although she had been prescribed psychotropic medication, she was not taking it. Mother admitted engaging in verbal and physical altercations with

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<sup>3</sup> Mother alleged the dragnet “drilled a hole in her head and put chlorine in her brain,” while government agents sprayed her with sulfuric acid. She also alleged the EMF brain stimulators monitored her thoughts and passed through her optic nerves; she claimed she could see the spies “in infrared.” Supposedly, the orgasmatron penetrated women when they were sleeping and collected urine samples, while the military satellites recorded her during sexual activity.

Uncle, sometimes in K.L.'s presence. However, she denied trying to stab Uncle.

Overall, K.L. appeared to be in good health, with no visible signs of abuse or neglect. He was well-fed, denied mental health issues or sexual abuse, and felt generally safe at home. However, K.L. confirmed that Mother and Uncle fought daily, occasionally becoming physically aggressive. Sometimes he yelled at them to stop. Recently, Mother had been talking to herself more frequently.

Uncle explained that although Mother appeared to have mental health issues, K.L. was not at risk of harm. Although Mother talked to herself and thought the government was spying on her, Uncle believed Mother was "harmless." He now denied Mother had tried to stab him.

A police officer recognized Mother because she had filed a police report at the station and appeared to have mental health issues. Records showed Mother had placed two calls reporting a suspicious vehicle outside her home and hostile activity by CIA and police officers.

The next day, August 4, DCFS social workers visited Father's home. K.L. had his own bedroom and bed. Father expressed concerns about K.L.'s safety. He reported that K.L. had cried when telling Father about the escalating physical altercations between Mother and Uncle. Father also reported that Mother had recently missed a family court date. When Father went to check on her, Uncle disclosed that Mother had attempted to stab him while he was sleeping. Father explained that in the past, he had been a victim of domestic violence by Mother. Father's wife was a nurse and had recently moved to Washington for a new job; Father planned to join her once the family law matter resolved.

On August 6, Mother was served with a removal order to detain K.L. from her custody. Mother was defiant, refused to release the child, and was placed in handcuffs. K.L. was transported to Father's home. The detention report advised that continued detention was necessary due to "high" risk of physical and emotional harm from continued exposure to domestic violence and Mother's unresolved mental health condition. K.L. expressed a preference to stay with Father.

At the August 9 detention hearing, the court ordered K.L. detained from Mother and released to Father, with monitored visitations for Mother. At a progress hearing later that month, the court permitted Father to move to Washington with K.L. and to appear for the adjudication hearing telephonically.

### C. Jurisdiction/Disposition Report and Hearing

The dependency petition filed August 8, 2018 on behalf of K.L. contained three counts under section 300, subdivisions (a) and (b), alleging Mother engaged in violent physical altercations with Uncle in the presence of the child, who had at times intervened (counts a-1, b-2).<sup>4</sup> The petition also alleged that Mother's mental and emotional problems rendered her unable to provide regular care for the child (count b-1).

DCFS filed a jurisdiction/disposition report on August 30. K.L., Mother, and Father provided additional witness statements. K.L. stated he was awakened most mornings by Mother talking to objects. When he left the house with Mother, she became anxious that the government was breaking into the house and had to hurry back. K.L. was scared by Mother's behavior and did not know whether her suspicions that someone was trying to kill them were true. K.L. had intervened in the altercations between Mother and Uncle, and had once been punched in the ear by Uncle.

Father said he felt "very helpless." He had gone to family court "numerous times" to address his concerns about K.L.'s safety, "but nothing ha[d] ever gotten solved." Father did not understand Mother's mental illness, but knew she was ill and needed help. Father had not seen Mother take any medication during the two years they were together. Father felt Mother's

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<sup>4</sup> Jurisdiction is proper under section 300, subdivision (a) where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." (§ 300, subd. (a).) Section 300, subdivision (b) permits the assertion of jurisdiction where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness."

house was not a suitable environment for K.L., and produced photos of the messy house and rashes K.L. developed from sleeping on the floor and sofa.

Mother maintained that any fights she had with Uncle were “typical brother sister fights.” She denied any major medical conditions. However, it was “clear” to DCFS that Mother suffered from “serious mental health issues and need[ed] to seek help.”

K.L. was noted to have a “strong bond” with Father, who “has always been involved in his life.” K.L. wanted to move to Washington with Father and his family; living with Mother was “too much.” DCFS determined it would be unsafe to return K.L. to Mother’s custody, given her “unresolved mental health issues.” Mother’s “instability” and potentially violent outbursts posed a risk of harm to K.L. DCFS recommended the court issue a family law order giving Father full legal and physical custody of K.L.

Mother failed to appear at the August 30, 2018 adjudication hearing, in violation of the court’s order. Mother’s counsel argued that “Father here is using the dependency system in order to find favorable rulings for the custody of the child, and is, in fact, litigating the family law issues here in the juvenile dependency court.” The dependency court sustained all counts in the petition against Mother, finding K.L. was at substantial risk of harm due to the escalating domestic violence between Mother and Uncle, and Mother’s mental illness. Father was deemed nonoffending.

At disposition, K.L. was declared a dependent of the court under section 300, subdivisions (a) and (b). He was detained from Mother and released to Father under DCFS supervision. Finding “those conditions which would justify the initial assumption of jurisdiction under . . . section 300 no longer exist and are not likely to exist if supervision is withdrawn,” the court terminated jurisdiction with a juvenile custody order awarding sole legal and physical custody to Father, subsequently filed in the family court. Mother was to have monitored electronic visits a minimum of two times per week, and at least one monitored visit when in Washington. Mother’s counsel objected to termination of jurisdiction, arguing that the dependency court was not “the best equipped court to handle this juvenile custody order” because “[t]here [was] an open family law case.” But the court agreed with DCFS that

Mother could modify the custody order in the family court when she could show a change of circumstances. Mother noticed an appeal.<sup>5</sup>

## DISCUSSION

Mother argues that because K.L. had a “non-offending father who was willing and able to care for him and was already engaged in family law court seeking full custody,” the juvenile court erred in asserting jurisdiction. We disagree.

### A. Standard of Review and Governing Law

“When a child is adjudged a dependent of the juvenile court [under section 300], any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court . . . .” (§ 302, subd. (c).) The court “may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.” (§ 362, subd. (a).) The court has discretion to assign legal and physical custody of the child to the custodial parent, reasonable visitation to the noncustodial parent, and then terminate its jurisdiction. (§ 361.2, subd. (b)(1).)

If the juvenile court terminates its jurisdiction over a dependent child, and “proceedings for dissolution of marriage . . . are pending in the superior court of any county, or an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child.” (§ 362.4, subd. (a).) The order of the juvenile court must be filed in the family law proceeding. (§ 362.4, subd. (b); see also § 361.2, subd. (b)(1).) Such “exit orders,” as they

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<sup>5</sup> A juvenile court’s exit order is appealable under section 395: “A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment.” Mother’s appeal was noticed prematurely on August 30, 2018, but we treat the notice of appeal as being from the juvenile custody order and final judgment rendered August 31, 2018. (§ 800, subd. (a); Cal. Rules of Court, rule 8.406(d) [“[a] notice of appeal is premature if filed before the judgment is rendered or the order is made, but the reviewing court may treat the notice as filed immediately after the rendition of judgment or the making of the order”]; § 302, subd. (d).)

are commonly called, remain in effect until modified or terminated by the family law court. (*In re John W.* (1996) 41 Cal.App.4th 961, 970; see also *In re Chantal S.* (1996) 13 Cal.4th 196, 202-203.) The “exit order” is considered a “final judgment” and cannot be modified “unless the [family] court finds that there has been a significant change of circumstances” and “modification of the order is in the best interests of the child.” (§ 302, subd. (d).)

There is a “long-standing principle that dependency proceedings have primacy over family court proceedings when it comes to child custody matters.” (*In re Nicholas E.* (2015) 236 Cal.App.4th 458, 465.) “Family court proceedings are aimed at assessing ‘the best interests of the child *as between two parents.*’ [Citation.] Dependency proceedings are not so narrow in focus, and invoke the state’s role as *parens patriae* in evaluating the best interest of the child, even if it means placement with someone other than the parents.” (*Ibid*; see also *In re Ryan K.* (2012) 207 Cal.App.4th 591, 599, fn. 10 [juvenile court has “special responsibility to the child” and “must look at the totality of the child’s circumstances”].) “Moreover, the presumption of parental fitness ‘that underlies custody law in the family court just does not apply to dependency cases.’ [Citation.] The juvenile court makes its custody determination ‘without any preferences or presumptions.’ [Citation.]” (*In re John W.*, *supra*, 41 Cal.App.4th at p. 972, italics omitted.)

We review the juvenile court’s decision to terminate dependency jurisdiction and issue a custody exit order for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300-301.) We will not disturb the order unless the juvenile court has exceeded the bounds of reason. (See *In re Jaden E.* (2014) 229 Cal.App.4th 1277, 1288.) To the extent Mother challenges the juvenile court’s jurisdictional findings, we review the court’s factual findings for substantial evidence. (See *In re J.K.* (2009) 174 Cal.App.4th 1426, 1433 “[o]n appeal, the ‘substantial evidence’ test is the appropriate standard of review for both the jurisdictional and dispositional findings”].)

## B. Juvenile Court’s Assertion of Jurisdiction and Custody Order

Mother’s opening brief asserts that “[s]ubstantial evidence does not support the court’s jurisdictional finding,” but contains no further argument.

Her reply brief argues that DCFS “did not meet its burden of establishing that [K.L.] had been harmed or was at risk of being harmed.” Her sole contention appears to be that because Father was available to care for K.L., the child was not at risk. That argument ignores the fact that K.L. resided primarily with Mother and Uncle, and it was her mental illness and their physical violence that put the boy at risk of harm.

Substantial evidence supports the juvenile court’s jurisdictional findings that K.L. was at substantial risk of harm due to Mother’s mental illness and ongoing domestic violence with Uncle. Father and K.L. described Mother’s increasingly unstable behavior, which resulted in both physical harm and deep distress to K.L. Mother had a history of domestic violence, and on at least two occasions, K.L. had been punched or hit by an object during Mother’s altercations with Father and/or Uncle. K.L. was exposed to Mother’s anxiety and paranoia without a full understanding of her mental illness. He was scared and cried when describing his home environment. Mother admitted having been diagnosed with schizophrenia, but was not taking any prescribed medication. Thus, her mental illness was untreated and posed an active threat to K.L. while he remained in her care. She attempted to stab Uncle in his sleep, and believed even her own son, J.P., was conspiring against her. She failed to provide a clean, safe home environment for K.L., or even a bed for him to sleep in. She also failed to attend critical court proceedings, including a family court mediation and the dependency court adjudication. Social workers and police officers also observed Mother’s obvious mental illness. To the extent Mother challenges the court’s jurisdictional findings, we find substantial evidence to support them.

We further conclude the dependency court acted within its discretion under section 362.4 in issuing a custody order despite pending litigation in the family court also involving custody issues. Mother argues that because Father was already seeking custody of K.L. through the family court, “[t]here was no need to find the [section 300] allegations true and assert jurisdiction over [him].” But a previous custody order by the family court “does not, in itself, deprive the juvenile court of jurisdiction to later litigate matters and issue orders affecting the custody of those children.” (*In re Anne P.* (1988) 199 Cal.App.3d 183, 193; see also *In re Nicholas E.*, *supra*, 236 Cal.App.4th at

pp. 464-465 [dependency court erred in dismissing section 300 petition without adjudication of merits based on mother's assertion that pending proceedings in family court already granted custody to father and eliminated risk of harm to children].) In fact, a juvenile court exit order under section 362.4 "*presupposes* an ongoing family law case." (*In re John W.*, *supra*, 41 Cal.App.4th at p. 973.) Referral of custody disputes to the family court upon termination of dependency jurisdiction is appropriate when there is "no showing that custody with either parent pose[s] a continued risk to the children." (*In re Alexandria M.* (2007) 156 Cal.App.4th 1088, 1097.)

At disposition, the juvenile court determined that Mother would pose a danger to K.L. if he remained in her custody, and acted reasonably in issuing an order granting custody to Father. The court terminated dependency jurisdiction on the premise that Mother – who retained primary custody of K.L. under a previous family court order – would no longer have custody of K.L. (See *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 713 [rejecting mother's argument that juvenile court's exit order and termination of jurisdiction indicated no further concerns about child's safety, because they were "premised upon" order granting sole custody to father and limited visitation to mother, indicating "continuing concerns about [mother's] ability to protect and care for" the child].) There was no presumption of parental fitness applicable to Mother to transfer jurisdiction to the family court, because she was found clearly unfit to care for K.L. Mother's mental illness was unresolved and she refused treatment, yet the family court's standing order awarded her primary custody. In considering the child's best interests, the court acted within its discretion in issuing an order granting sole custody to Father.

The cases on which Mother relies are inapposite, as none invoked a court's authority under section 362.4 to issue an order essentially removing custody from an offending parent who had primary custody of the child by a previous family court order. (See *In re John W.*, *supra*, 41 Cal.App.4th at p. 965 ["Child custody disputes between divorced parents, neither of whom pose a risk of real detriment to the child, should not be waged at taxpayers' expense in the juvenile courts."]; *In re A.G.* (2013) 220 Cal.App.4th 675, 684-686 [dependency court erred in sustaining petition as to mother, where father

was nonoffending and had always cared for children, mother was never the primary caregiver, and children were not harmed or at risk of harm]; *In re Phoenix B.* (1990) 218 Cal.App.3d 787, 790-791, 792-794; *id.* at p. 792 [declining to assert dependency jurisdiction because child's welfare was not endangered by placement with noncustodial father following mother's mental breakdown and release from hospital; referring custody dispute to family court because there was no court order regarding custody and both parents were "equally entitled to custody"].) Furthermore, none of these cases "purported to authorize a juvenile court to skip the evidentiary hearing on jurisdiction or to apply a rule of abstention just because a nonoffending parent could gain custody of the child in an ongoing family court proceeding." (*In re Nicholas E.*, *supra*, 236 Cal.App.4th at p. 465.) Thus, we find no abuse of discretion in the court's jurisdictional findings and dispositional order granting sole custody of K.L. to Father and terminating dependency jurisdiction.

### **DISPOSITION**

The juvenile court's jurisdictional findings and dispositional order are affirmed.

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MANELLA, P. J.

We concur:

COLLINS, J.

CURREY, J.